

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TOMMA D. CELUCH</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 214,959 & 222,711
<b>LUCE PRESS CLIPPINGS, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>FIREMAN'S FUND INSURANCE COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>AMERICAN HOME ASSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and one of its insurance carriers, namely American Home Assurance Company, requested review of the preliminary hearing Order entered October 10, 1997, by Administrative Law Judge Floyd V. Palmer.

**ISSUES**

In their request for review and brief to the Appeals Board, respondent and American Home Assurance described the issue as:

Whether claimant suffered an accidental injury arising out of and in the course of her employment with respondent on the date(s) alleged.

Although respondent and Home Assurance attempt to describe the issue as one of compensability, it is clear from the briefs that the issue is really the date(s) of accident for the sole purpose of determining which of respondent's insurance carriers should initially pay for the preliminary benefits ordered.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board has limited jurisdiction on appeals from preliminary hearing orders. The Appeals Board may review allegations that an administrative law judge exceeded his or her jurisdiction, including allegations that the administrative law judge erred on jurisdictional issues listed in K.S.A. 44-534a, as amended. However, every allegation of error does not constitute a jurisdictional issue. Jurisdiction is described in Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied*, 221 Kan. 757 (1977), as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

The workers compensation administrative court has limited jurisdiction. Its subject matter jurisdiction is limited to cases involving accidental injury arising out of and in the course of employment. Whether claimant suffered accidental injury and whether the injury arose out of and in the course of employment are, therefore, designated in K.S.A. 44-534a, as amended, as jurisdictional issues. Personal jurisdiction requires notice and timely written claim. Notice and written claim are also designated as jurisdictional issues under K.S.A. 44-534a, as amended. Whether the administrative law judge should, in a given set of circumstances, authorize medical treatment is not a question which goes to the jurisdiction of the administrative law judge. K.S.A. 44-534a, as amended, grants an administrative law judge the authority to decide issues concerning the payment of such medical treatment at a preliminary hearing.

In Docket No. 214,959 claimant alleges a series of accidents resulting in injuries to both her arms and neck during the period ending August 9, 1996. In Docket No. 222,711 claimant alleges a series of accidents ending April 4, 1997. American Home Assurance Company provided workers compensation insurance coverage for respondent beginning January 1, 1997. Before that date, Fireman's Fund was the insurance carrier.

The questions of whether claimant suffered one accident or two, and/or on what date or dates did the alleged series of accidents end do not give rise, under the facts of this case, to a disputed issue of whether claimant suffered an accidental injury or whether the injury arose out of and in the course of employment. The Administrative Law Judge's finding that claimant has a compensable neck injury as a result of her work for respondent over a period of time is not really the issue. It is clear from the briefs that the real issue is which insurance carrier should pay. The Administrative Law Judge's determination of that issue for purposes of preliminary hearing is not jurisdictional. Clearly, it makes no difference to claimant which

of respondent's insurance carriers pays the preliminary benefits. It probably is of little consequence to the respondent as well. The issue primarily concerns the two insurance carriers. Generally, disputes between insurance carriers regarding their respective liabilities should not be litigated in workers compensation proceedings unless the claimant's interests are at stake. See Kuhn v. Grant County, 201 Kan. 163, 439 P.2d 155 (1968); and American States Ins. Co. v. Hanover Ins. Co., 14 Kan. App. 2d 492, 794 P.2d 662 (1990). Furthermore, an interlocutory review of the Administrative Law Judge's findings at this stage of the proceeding by one board member and based upon an incomplete record would be of little benefit to the parties.

The parties may preserve the date of accident issue for final award as provided by K.S.A. 44-534a(a)(2), as amended. That statute provides in pertinent part:

"Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts."

K.S.A. 44-534a, as amended, and K.S.A. 44-551(b), as amended, do not grant the Appeals Board jurisdiction at this juncture of the proceeding to review and reweigh the evidence concerning the award of preliminary benefits as to which insurance carrier should be liable for payment of same. The Administrative Law Judge did not exceed his jurisdiction.

**WHEREFORE**, the Appeals Board finds and concludes that the appeal by the respondent and its insurance carrier, American Home Assurance Company, should be dismissed as the Appeals Board is without jurisdiction to consider the issue raised and the Order by Administrative Law Judge Floyd V. Palmer, dated October 10, 1997, should and does remain in effect as originally entered.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January, 1998.

---

BOARD MEMBER

c: George H. Pearson, Topeka, Kansas  
Patrick M. Salsbury, Topeka, Kansas  
Matthew S. Crowley, Topeka, Kansas  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director